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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 8, 2001

PETITION OF

SPRINT COMMUNICATIONS COMPANY
OF VIRGINIA, INC.

CASE NO. PUC010136

For Arbitration of
Interconnection Rates, Terms,
and Conditions Pursuant to
47 U.S.C. § 252(b) and Related
Arrangements with Verizon Virginia
Inc. and Verizon South Inc.

PRELIMINARY ORDER

On June 15, 2001, Sprint Communications Company of Virginia, Inc. ("Sprint") filed with the State Corporation Commission ("Commission") a Petition for arbitration of certain terms, conditions, and prices for interconnection and related arrangements ("Arbitration Petition") with Verizon Virginia Inc. ("Verizon Virginia") and Verizon South Inc. ("Verizon South") pursuant to § 252(b) of the Telecommunications Act of 1996.¹ Sprint requests the Commission issue an arbitration decision consistent with its position on unresolved issues and approve Sprint's attached proposed interconnection agreement.

¹ Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56, *codified* at 47 U.S.C. § 151 *et seq.* Hereinafter, all citations to the Telecommunications Act of 1996 will be to the ("1996 Act") or the ("Act") as codified in the United States Code.

On July 2, 2001, Sprint filed a correction to a typographical error in the last sentence on page 2 of its Arbitration Petition.² On July 9, 2001, Verizon Virginia and Verizon South filed their Answer to the Arbitration Petition of Sprint and also their Supplemental Issues List and their alternative proposed interconnection agreements with Sprint.

Sprint brings its Arbitration Petition pursuant to 47 U.S.C. §§ 251 and 252 and the effective rules implementing these provisions of the Act, issued by the Federal Communications Commission ("FCC") in its Local Competition Order.³ Sprint acknowledges in its Arbitration Petition that this Commission declines to waive sovereign immunity under the Eleventh Amendment to the Constitution of the United States, citing the Commission's Order of Dismissal of the application of AT&T Communications of Virginia, Inc., et al. for arbitration with Verizon Virginia, Case No. PUC000282, issued December 20, 2000, ("AT&T Dismissal Order"). We repeat below our holding in the AT&T Dismissal Order which declined to exercise jurisdiction.

As stated in our November 22, 2000, Order, until the issue of the Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we will not act solely under

² The erroneous date of January 6, 2000, was corrected to January 6, 2001.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) hereinafter the "Local Competition Order".

the Act's federally conveyed authority in matters that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms, and conditions of interconnection agreements between local exchange carriers. (AT&T Dismissal Order, p. 2)

Because the United States Supreme Court is reviewing the issue of a state commission's waiver of sovereign immunity⁴ by participating in the Act's arbitration procedure, we will await the Supreme Court's decision before proceeding further to arbitrate under the Act.

Sprint has not sought arbitration under 20 VAC 5-400-180, "Rules governing the offering of competitive local exchange

⁴ See Mathias v. Worldcom Technologies, Inc., 00878 (Ruling below: Illinois Bell Telephone Co. v. Worldcom Technologies, Inc. (179 F.3d 566 7th Cir. 1999)). The applicable issues under review include:

Does state commission's acceptance of Congress's invitation to participate in implementing federal regulatory scheme that provides that state commission determinations are reviewable in federal court constitute waiver of 11th Amendment immunity? and

Can official capacity action seeking prospective relief against state public utility commissioners for alleged ongoing violations of federal law in performing federal regulatory functions under the 1996 Telecommunications Act be maintained under *Ex parte Young* doctrine?

Also consolidated on appeal is Verizon Maryland, Inc. v. PSC of Maryland, 00-1531 (Ruling below: Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc. (240 F.3d 279 (4th Cir. 2001))). The Supreme Court will consider the following additional issue:

Does federal court have independent subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether state public utility commission's action interpreting or enforcing interconnection agreement violate the 1996 Telecommunications Act?

telephone service", specifically 20 VAC 5-400-180 F 5 and 6, which provide for our "arbitration" of contested interconnection matters.⁵

The parties may elect to proceed with arbitration by the FCC under the Act in lieu of this Commission, or the parties may pursue resolution of unresolved issues pursuant to 20 VAC 5-400-180 F 6. If the parties wish to pursue this matter before the Commission, the proceeding before us will be deemed to be requesting our action only under authority of Virginia law and our Rules.

Accordingly, IT IS ORDERED THAT:

(1) Sprint and Verizon Virginia and Verizon South shall, within fifteen (15) days of the date of this Order, advise us in writing whether they wish to pursue arbitration before us, consistent with the findings above.

(2) This case is continued for further order of the Commission.

⁵As discussed in our Order of June 15, 2000, in Case No. PUC990101, *Petition of Cavalier Telephone, LLC, For arbitration of interconnection rates, terms and conditions, and related relief*, the Commission has authority under state law to order interconnection between carriers operating within the Commonwealth, and § 56-38 of the Code of Virginia authorizes us, upon request of the parties, "to effect, by mediation, the adjustment of claims, and the settlement of controversies, between public service companies, and their employees and patrons."